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## SYMPOSIUM ON THE SEVENTH CIRCUIT AS A COMMERCIAL COURT

RICHARD BOOTH  
SYMPOSIUM EDITOR

FOREWORD: THE SEVENTH CIRCUIT AS A  
COMMERCIAL COURT

*Richard Booth* 667

Professor Booth explains the theory behind the selection of articles in this symposium, summarizes the positions taken by the authors and commentators and adds his own perspective on how to assess the Seventh Circuit's performance as a commercial court.

THE SEVENTH CIRCUIT AND THE MARKET  
FOR CORPORATE CONTROL

*Dennis Honabach* 681  
*Roger Dennis*

The Seventh Circuit has played a pivotal role in the development of the law of takeovers. Early in the decade the court adopted the position of permitting wide discretion to target managers to fashion self-help antitakeover defenses while at the same time striking down state legislative efforts to restrict takeovers. By the end of the decade, however, the court had virtually reversed these positions. In part, the changes reflect nothing more than the court's role as an intermediate court of appeals. But in larger part, the changes in the court's position reflect the doctrinal tumult in the area as a consequence of the impact of Law and Economic analysis on corporate law. The court's latest opinions, moreover, reflect the growing recognition that reconciling the various strains of Law and Economics is a difficult task.

A CORPORATE PALEONTOLOGIST'S LOOK AT  
LAW AND ECONOMICS IN THE SEVENTH CIRCUIT

*Douglas M. Branson* 745

In the corporate area, law and economics scholarship has passed the point beyond which marginal utility of its various analytical tools declines. Overaggregation of phenomenon under now shop-worn Law and Economics constructs abounds and duplicitous use of those analytical tools to reach pre-ordained results has become all too frequent. Judges Posner and Easterbrook's corporate-securities law opinions reveal surprising mixed results perhaps because they have come to recognize the declining marginal utility of some L&E ideas, but also perhaps because the judges came to realize that judges' role—doing substantial justice in individual cases—is somewhat antithetical to social scientists' role—predicting or regulating behavior based upon averages or tendencies.

**THE SEVENTH CIRCUIT ON ENVIRONMENTAL  
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Seven recent environmental law decisions of the Seventh Circuit reveal a deeply troubled court wrestling with the limits of its own authority. While it is clear that the Seventh Circuit is not an environmentally activist court, these recent decisions suggest that some of the judges in some cases have adopted a perspective of strict scrutiny. The concept of judicial deference to agency expertise and discretion is scarcely mentioned; nor does the court exhibit any discernible position on environmental policy. Instead, the focus of these cases is on the appropriate scope of judicial review. That focus is well-developed but arguably leaves the pressing environmental problems that are raised in this litigation without judicial resolution.

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The seventh Circuit is an unattractive forum for the protection of business interests against environmental agency inaction.

**WARRANTY DISPUTES IN THE SEVENTH  
CIRCUIT UNDER ARTICLE TWO,  
SALES: ADVANTAGE SELLER?**

*Richard E. Speidel* 813

The results in commercial warranty disputes decided by the court under Article 2, Sales give an advantage to the seller. The question is whether this advantage is proper. More particularly, the question is whether the results are justified when tested under contemporary warranty theory and by sound Code methodology. After classifying and evaluating all of the warranty opinions by the court which rely on Article 2, Professor Speidel concludes that the answer is no. Conceding that a pro-seller bias may be built into Article 2, his study, nevertheless, uncovers numerous methodological flaws in the cases and recurring patterns of incomplete or unsound analysis by the court over the last twenty years. These defects exacerbate the seller's built-in advantage and, in the process, raise serious questions about the court's performance in these important commercial disputes.

**ARTICLE TWO WARRANTY DISPUTES  
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*C. Paul Rogers III* 849  
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This response to Professor Speidel asserts that partiality in Article 2 warranty decisions can easily occur given the construction and flexibility of the Code. The authors surveyed other circuits and found little evidence of seller bias or Seventh Circuit influence in warranty cases.

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POST-CHICAGO  
LAW AND ECONOMICS**

**Randy E. Barnett  
and  
Jules L. Coleman  
Symposium Editors**

